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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SANDY ALECIA SINCLAIR-LEWIS,
individually;

Plaintiffs,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
an Ohio Corporation; DOES I - X, and ROE
CORPORATIONS I - X, inclusive,

Defendants.

Case No. 2:20-cv-02063-JCM-VCF

**JOINT STIPULATION TO STAY ALL
REMAINING DEADLINES PENDING A
MARCH 22, 2023 MEDIATION**

(FIRST REQUEST)

Plaintiff, Sandy Alecia Sinclair-Lewis, by and through her counsel at the law firm ER INJURY ATTORNEYS, and Defendant SMITH'S FOOD & DRUG CENTERS, INC., by and through its counsel at the law firm COOPER LEVENSON, P.A., hereby move to stay all remaining operative deadlines (ECF No. 16 at 5) stipulated to by the parties—and subsequently judicially approved (ECF No. 17), pending a March 22, 2023 mediation.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A January 25, 2022 order (ECF No. 17) grants a stipulation to extend the discovery deadlines. The operative deadlines are as follows:

- Initial expert disclosures: Closed.
- Rebuttal expert disclosures: March 11, 2022 (now closed).
- Close of discovery: April 11, 2022 (now closed).
- Dispositive motions: May 11, 2022 (closed).
- Joint proposed pre-trial order: June 10, 2023 (fifty-three days from today).

(ECF No. 17 at 5)

On December 20, 2022, the Court issued an Order (ECF No. 51) denying Defendant's Motion for Summary Judgment. The parties proposed joint pre-trial order is now due thirty days from the date of the Order (January 19, 2023).

Prior to the Order (ECF No. 51), counsel discussed the possibility of mediating and settling this action. A short while later, the parties met and conferred telephonically after several email exchanges about a joint proposal to mediate to reach a cost-effective and speedy resolution, to limit discovery expenses, and to conserve the precious resources of the court. The parties have agreed to and therefore scheduled a half-day mediation with Judge Trevor Atkin at *ARM*, one of the largest private alternative dispute resolution (ADR) provider.

Judge Atkin, a jurist with decades of experience, is highly respected by both parties and, indeed, by the local legal community at large, thus, both parties are more than hopeful that the mediation will succeed and that the action shall settle.

II. LAW AND ARGUMENT

A. **The District Court should stay the remaining deadlines contained within the January 25, 2022 order (ECF No. 17) by utilizing its inherent powers to control its own docket.**

A District Court has the inherent power to control its dockets. *Atchison, Topeka & Santa Fe Ry. v. Hercules, Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998). This includes the power to stay a proceeding. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "The power to stay proceedings is incidental to the

1 power inherent in every court to control the disposition of the causes on its docket with economy of
2 time and effort for itself, for counsel, and for litigants.” *Landis*, 299 U.S. at 254. If determining whether
3 a stay is warranted, the court must balance the hardships to the parties. *Dependable Highway Exp., Inc.*
4 *v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

5 As mentioned in the introduction, Judge Atkin has a very high success rate, and there is a strong
6 possibility of this action settling. The Court recently issued an order denying SMITH’S motion for
7 summary judgment. Most of the scheduled deadlines have expired, with the next being the deadline to
8 submit the proposed joint pre-trial order — thirty days after the order was issued. The parties agree with
9 each other that it is pointless to expend resources on drafting a pre-trial order, and subsequent motions
10 in limine, and having the court utilize its precious judicial resources adjudicating them when a
11 mediation with a highly respected and successful mediator is due shortly after the dispositive motions
12 deadline.

13 Also, staying the remaining deadlines will allow the parties to divert their attention to, and focus
14 on, preparing for the upcoming mediation. A stay will contribute towards the court’s goal of ensuring a
15 “just, speedy, and inexpensive determination of every action[.]” *Tradebay, LLC v. eBay, Inc.*, 278
16 F.R.D. 597, 602–03 (D. Nev. 2011) (stated in the context of staying discovery; however, the same
17 principle applies in this instance), that will hopefully result in the avoidance of both the parties and the
18 court incurring additional expense and expending further time (namely on dispositive motion practice,
19 pre-trial evidential motions, and trial itself). If the action settles at mediation, any pending motion shall
20 become moot, and the parties shall notify the court accordingly. Shortly after, as soon as the settlement
21 documents are finalized, the parties shall then stipulate to dismiss with prejudice.

22 For the reasons stated above, the parties show good cause as to why the court should utilize its
23 inherent powers to stay the remaining deadlines until after the date of the mediation.¹ If the mediation is

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25 ¹ Because the parties stipulate to, and seek judicial approval for, a stay under the court’s inherent power to
26 control its own docket and not under Local Rule IA 6-1 and Local Rule 26-3, an analysis under these rules is not
27 necessary. (Local Rule 26-3 lists four factors that are considered. These apply only when a party moves for an
28 extension to extend a discovery deadline or to reopen discovery; here, the parties neither stipulate or move to
extend a discovery deadline nor stipulate or move to reopen discovery, but instead simply ask the court to
approve a short stay until after the mediation.)

1 unsuccessful, the parties shall notify the court the day after the mediation and shall stipulate—subject to
2 judicial approval—to a new deadline to submit its proposed joint pre-trial order, likely to fall on the
3 fourteenth day (*April 5, 2023*) after the date on which the notice of an unsuccessful mediation is
4 docketed.

5 **III. CONCLUSION**

6 The parties demonstrate good cause for judicial approval of this stipulation to briefly stay the
7 remaining deadlines in this action. They believe that this action has a good chance of settling at
8 mediation, into which all sides enter in good faith; additionally, precious judicial resources shall be
9 conserved should the parties settle, thus the twin goals of judicial efficiency and economy are
10 promoted, and the resources of both parties shall be conserved by the parties not having to engage in
11 dispositive motion practice and the court not having to adjudicate between the two sides, in addition to
12 negating the need for further motion practice and a possible jury trial. Also, if the parties settle, any
13 further expensive and time-consuming motion practice and possible trial shall be eliminated.

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This is the parties' first request for a stay of all remaining deadlines, which is made in good faith and not for the purpose of delay. In addition, neither party shall be prejudiced by a stay. Based on the above, the parties respectfully request the entry of an order that judicially approves this stipulation.

THE PARTIES SO STIPULATE.

Dated: December 21, 2022	Dated: December 21, 2022
ER INJURY ATTORNEYS By: <u>/s/ Justin G. Randall</u> JUSTIN G. RANDALL, ESQ. Nevada Bar No. 012476 4795 South Durango Drive Las Vegas, Nevada 89147 Attorneys for Plaintiff	COOPER LEVENSON, P.A. By: <u>/s/ Andre T. Marques</u> JERRY S. BUSBY, ESQ. Nevada Bar No. 1107 ANDRE T. MARQUES, ESQ. Nevada Bar No. 14737 3016 West Charleston Boulevard, #195 Las Vegas, Nevada 89102 Attorneys for Defendant Smith's Food & Drug Centers, Inc.

ORDER

IT IS SO ORDERED.

Dated this 21st day of December, 2022.

IT IS HEREBY ORDERED that if the mediation with mediation with Judge Atkins is not successful, the Joint Pretrial Order is due April 26, 2023.


 UNITED STATES MAGISTRATE JUDGE